

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MATTHEW H. BECKETT,

Plaintiff,

v.

SCALIA, *et al.*,

Defendants.

Case No. 1:20-cv-01468-JLT-CDB (PC)

**ORDER DENYING PLAINTIFF'S
MOTIONS TO APPOINT COUNSEL AND
FOR COMPETENCY DETERMINATION**

(Docs. 42 & 43)

Plaintiff Matthew H. Beckett is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action filed under 42 U.S.C. § 1983. This action proceeds on Plaintiff's Eighth Amendment excessive force claims against Defendants Scalia, Madrigal and Hernandez and failure to protect/failure to intervene claims against Defendant Hackworth, and Eighth Amendment deliberate indifference to serious medical needs claims against Defendants Scalia, Madrigal, Hernandez, Hackworth, and Hurtado.

I. INTRODUCTION

Plaintiff filed two motions on February 14, 2024. (Docs. 42 & 43.) More specifically, in a document titled "Motion – New Circumstances, 3rd request for appointment of Counsel In either full or Partial Capacities and Motion – Court Clearly Certify Competency of Plaintiff," Plaintiff asks the Court to "certify [him] as 'competent to move forward with litigation of these matters.'"

1 (Doc. 42 at 1-2.) He states without “an answer of clearance of competency,” “[i]t would do ill
2 justice to these cases to move forward in pursuit of justice.” (*Id.* at 2.) Plaintiff contends the
3 Court failed to address “and [to] either clearly state” his competency, appoint a forensic team
4 “for said clearance” and notes the Court refused his second request for appointed counsel. (*Id.*)
5 Plaintiff states he is currently being held under “Cal Pen Code 1026,” and that this Court “cannot
6 rightly move forward with this case without addressing the issue.” (*Id.*) Plaintiff objects to the
7 Court’s “failure to recognize [his] current situation.” (*Id.*)

8 In a second document filed February 14, 2024, titled “Motion: 3-rd Request For
9 Appointment of Counsel” (Doc. 43), Plaintiff states he is unable “to investigate facts” and that
10 this case “requires extensive documentary [sic] disc, depositions of prison officials as well
11 as access to witnesses,” which he cannot do. (*Id.* at 2.) Plaintiff asserts that as a patient of the
12 Department of State Hospitals he “only allowed to possess a meager 6” (inches) of paperwork,
13 including, but not limited to legal work, personal letters, mail and therapy related paperwork.”
14 (*Id.*) Further, Plaintiff may not possess crime scene photos. (*Id.*) Because he is limited to “1 -free
15 mail per week and may not excess more than a 1/4” (in) inside of a 16” x 4” standard envelope,”
16 he is prevented from “being able to send in litigation for his & multiple other cases in this district
17 court and outside of it.” (*Id.*) He maintains these restrictions have “led to time violations on
18 several occasions.” (*Id.*) Next, Plaintiff contends that “due to strong resistance by the” Attorney
19 General’s Office he expects there will be conflicting evidence “leading to the need for cross
20 examination which will be important to these cases.” (*Id.*; *see id.* at 6.) Plaintiff contends his
21 indigency “should be considered as the circumstances & factors present ‘special difficulties’” for
22 him. (*Id.* at 3.) Plaintiff experiences great stress that is “bad for [his] existing ailments,”
23 including hypertension, congestive heart failure, a heart murmur, and osteoporosis that makes
24 writing painful and difficult. (*Id.*)

25 Next, Plaintiff states he is “not highly educated in school or law,” does not know how to
26 obtain discovery or answers to deposition questions. (*Id.* at 3-4.) Plaintiff maintains he has
27 shown the Court “on several occasions” that he has developmental learning disability and a
28 severe mental health diagnosis, but the Court ignored his request for a competency hearing “or to

1 give competency consideration of any kind.” (*Id.* at 4.) Plaintiff contends he has no idea how to
 2 proceed, particularly regarding discovery. (*Id.* at 4-5.) He asserts he has tried to “obtain legal
 3 books and materials” but the hospital infringes upon his rights to access the courts. (*Id.* at 5.)
 4 Plaintiff states he has “no idea what the de novo hearing the Court spoke of in (Doc. 34) ... even
 5 has to do with” his case. (*Id.*)

6 Plaintiff separately asserts this case is complex, the legal issues are “too hard to re live
 7 and too complex to handle.” (*Id.*) Factual issues may require expert witnesses regarding conduct
 8 of the officers, and medical and mental health issues. (*Id.*) Plaintiff asserts it “may serve justice
 9 to combine” the cases he has filed in this district because they “have the same pre-existing
 10 factors leading up to the complains and fall under the same rights violations.” (*Id.* at 5-6.)
 11 Plaintiff contends “the Court is wrong in saying that this case(s) are factually simple & legally
 12 straightforward.” (*Id.* at 6.) He asserts his case is worthy of the appointment of counsel (*id.* at 6-
 13 7) and that cases involving staff assaults in Kings County are especially difficult “since the facts
 14 are almost always contended and there are seldom neutral witnesses.” (*Id.* at 7.) Plaintiff
 15 maintains the skills required to litigation this case are beyond his abilities. (*Id.*) Alternatively,
 16 Plaintiff asks the Court to appoint counsel for the “limited purpose” of assisting him with
 17 discovery “and Trial Proceedings.” (*Id.* at 8.) Plaintiff states he has been found to be “‘legally
 18 insane’ under Penal Code 1026” and that to proceed without a competency declaration from this
 19 Court “would be a failure of fair and equitable justice.” (*Id.*) Plaintiff has sought the assistance of
 20 counsel from eight separate attorneys without success and does not possess the financial ability
 21 to hire an attorney. (*Id.* at 8-9.)

22 II. DISCUSSION

23 As Plaintiff was advised on November 30, 2023, a “‘party proceeding pro se in a civil
 24 lawsuit is entitled to a competency determination when substantial evidence of incompetence is
 25 presented.’” (Doc. 33 at 3:22-24, citing *Allen v. Calderon*, 408 F.3d 1150, 1153 (9th Cir. 2005)).
 26 Unlike the plaintiff is *Allen*, Plaintiff offers only his own statements concerning his incapacity. In
 27 *Allen*, the plaintiff’s allegations regarding competency were additionally supported by another
 28 inmate’s sworn declaration and a letter from Allen’s psychiatrist with details concerning his

1 schizophrenia diagnosis and medications. *Allen*, 408 F.3d at 1153. Here, the Court will not order
2 a competency determination on Plaintiff's statements alone. Plaintiff must present "substantial
3 evidence of incompetence" but has failed to do so. If Plaintiff wishes the Court to make such a
4 determination, he should submit *evidence* for the Court's consideration. Something more than
5 Plaintiff's statements alone—for example, statements from treating physicians, medical records
6 regarding diagnoses and medications, and/or sworn declarations of knowledgeable witnesses.

7 Moreover, the Court notes it has considered Plaintiff's previous requests for the
8 appointment of counsel pursuant to *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997). Most
9 recently, the Court considered numerous factors that Plaintiff relies on in his instant requests: pro
10 se status, incarceration, indigency, a lack of legal education, limited access to the law library, and
11 the fact an attorney is better equipped to litigate this type of case. (*See* Doc. 33 at 4-5.) Nothing
12 presented by Plaintiff's most recent requests changes the Court's analysis regarding those issues
13 and the Court will not repeat the analysis here.

14 To the extent Plaintiff contends certain restrictions imposed by his hospitalization—
15 regarding page limitations, photographs, postage, paper and envelope size or availability—
16 support his request, those restrictions appear to be common to all patients at the facility and do
17 not amount to an exceptional circumstance. *See, e.g., Suarez v. Clark*, No. 1:22-cv-00160-JLT-
18 SAB (PC), 2024 WL 477982, at *1 (E.D. Cal. Jan. 25, 2024) ("the Court has 'repeatedly' held
19 incarceration's challenges on litigation do not constitute an exceptional circumstance. [] If
20 Plaintiff's incarceration was an exceptional circumstance, any prisoner would be entitled to
21 counsel").

22 As concerns Plaintiff's physical and mental disabilities, those circumstances are not
23 typically exceptional circumstances warranting the appointment of counsel. *See Jones v.*
24 *Kuppinger*, No. 2:13-cv-0451 WBS AC P, 2015 WL 5522290, at *3-*4 (E.D. Cal. Sept. 17, 2015)
25 ("[c]ircumstances common to most prisoners, such as a deficient general education, lack of
26 knowledge of the law, *mental illness and disability*, do not in themselves establish exceptional
27 circumstances warranting appointment of voluntary civil counsel"); *Jones v. Stieferman*, 2007
28 WL 4219169, at *1 (E.D. Cal., Nov. 29, 2007) ("being disabled and requiring use of a wheelchair

1 to assist with mobility is not the type of exceptional circumstances which allow the court to
2 request voluntary assistance of counsel”); *see also Fletcher v. Quin*, No. 15CV2156-GPC (NLS),
3 2018 WL 840174, at *2 (S.D. Cal. Feb. 13, 2018) (impairment must be “an incapacitating mental
4 disability” and be supported by “substantial evidence of incompetence”). And, as noted above,
5 Plaintiff fails to show substantial evidence of his incompetence.

6 To the extent Plaintiff declares this case involves medical issues that will require expert
7 testimony, nor is this an exceptional circumstance warranting the appointment of counsel. *Brooks*
8 *v. Smith*, No. 2:22-CV-0062-DMC-P, 2022 WL 17629298, at *1 (E.D. Cal. Dec. 13, 2022)
9 (“Plaintiff’s stated circumstances such as the lack of knowledge, legal rules and procedure, or the
10 potential necessity of an expert witness are common to almost all prisoners and, as such not
11 extraordinary”); *Honeycutt v. Snider*, No. 3:11-cv-00393-RJC (WGC), 2011 WL 6301429, at *1
12 (D. Nev. Dec. 16, 2011) (“The appointment of experts in deliberate indifference cases is rare, and
13 such requests should be granted sparingly, particularly given the large volume of cases in which
14 indigent prisoners allege claims under the Eighth Amendment related to medical care, and the
15 substantial expense defendants may have to bear if courts were to appoint experts in such cases”).
16 Furthermore, Plaintiff is advised that Rule 706 of the Federal Rules of Evidence is not a means to
17 avoid the *in forma pauperis* statute and its prohibition against using public funds to pay for the
18 expenses of witnesses. *Manriquez v. Huchins*, No. 1:09-cv-00456-LJO-BAM PC, 2012 WL
19 5880431, at *12 (E.D. Cal. Nov. 21, 2012). Nor does Rule 706 contemplate court appointment
20 and compensation of an expert witness as an advocate for Plaintiff. *Faletogo v. Moya*, No.
21 12cv631 GPC (WMC), 2013 WL 524037, at *2 (S.D. Cal. Feb. 23, 2013). The appointment of an
22 expert witness under Rule 706 is intended to benefit the trier of fact, not a particular litigant.
23 *Faletogo*, 2013 WL 524037, at *2. *See Bontemps v. Lee*, No. 2:12-cv-0771 KJN P, 2013 WL
24 417790, at *3-4 (E.D. Cal. Jan. 31, 2013); *Honeycutt*, 2011 WL 6301429, at *1; *Gamez v.*
25 *Gonzalez*, No. 08cv1113 MJL (PCL), 2010 WL 2228427, at *1 (E.D. Cal. Jun. 3, 2010).

26 Moreover, while the Court appreciates Plaintiff’s efforts to secure counsel, his inability to
27 find counsel is not “a proper factor for the Court to consider in determining whether to request
28

counsel.” *Howard v. Hedgpeth*, No. 1:08-cv-00859-RTB-PCL, 2010 WL 1641087, at *2 (E.D. Cal. Apr. 20, 2010).

In sum, Plaintiff faces challenges and circumstances faced by most pro se prisoner or civil detainee litigants. As the Court has previously held, those circumstances are not exceptional and do not warrant the appointment of counsel. *Rand*, 113 F.3d at 1525.

III. CONCLUSION AND ORDER

For the reasons stated above, **IT IS HEREBY ORDERED** that Plaintiff’s February 14, 2024 requests for a competency determination and for the appointment of counsel (Docs. 42 & 43) are **DENIED**.

IT IS SO ORDERED.

Dated: **March 29, 2024**


UNITED STATES MAGISTRATE JUDGE